

Message Text

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ACTION IO-10

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TO SECSTATE WASHDC 4998

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DEPARTMENT

NESCO

E.O. 11652: N/A

TAGS: OCON, UNESCO, US

SUBJECT: MID-POINT REPORT ON DOUBLE TAXATION OF
COPYRIGHT ROYALTIES MEETING

1. THE MEETING OF THE COMMITTEE OF GOVERNMENTAL EXPERTS
ON THE DOUBLE TAXATION OF COPYRIGHT ROYALTIES CONVENED
BY UNESCO BEGAN ON MONDAY MORNING, NOVEMBER 3, 1975.
ELECTED AS CHAIRMAN WAS MR. ABDERRAHMANE AMRI OF TUNISIA,
AS RAPPORTEUR, MR. M. ANDRE KEREVER OF FRANCE, AND AS
VICE CHAIRMEN THE DELEGATES OF BRAZIL, GHANA, JAPAN, THE
USSR AND THE UNITED STATES.

2. MONDAY AND TUESDAY THE GROUP MET IN PLENARY WITH
MOST OF THE TIME TAKEN UP WITH GENERAL DISCUSSIONS. THE
MAJOR ISSUES WERE THE QUESTION OF THE SCOPE OF THE
CONVENTION AND THE CRITERION OF TAXATION.

3. THE US DELEGATION EXPRESSED ITS POSITION THAT THE US
SUPPORTS THE GENERAL PRINCIPLE OF THE ELIMINATION OF
DOUBLE TAXATION OF INCOME; HOWEVER, IT HAS SIGNIFICANT
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DOUBTS ABOUT THE FEASIBILITY AND PRACTICABILITY OF A

MULTILATERAL APPROACH TO RELIEVE AUTHORS AND CERTAIN OTHER COPYRIGHT PROPRIETORS OF THE BURDEN OF DOUBLE TAXATION OF THEIR COPYRIGHT ROYALTY INCOME. THE US INDICATED THAT IT WILL TAKE THE RESULTS OF THE MEETING AND HAVE THEM STUDIED BY INTERESTED GOVERNMENT AGENCIES AND PRIVATE SECTOR ORGANIZATIONS.

4. AS TO THE QUESTION OF THE CRITERION FOR TAXATION, MOST OF THE DEVELOPED COUNTRIES EXPRESSED A PREFERENCE FOR THE COUNTRY OF RESIDENCE WHILE MOST OF THE DEVELOPING COUNTRIES EXPRESSED A PREFERENCE FOR THE COUNTRY OF SOURCE. BRAZIL INSISTED THAT THE COUNTRY OF SOURCE RETAIN THE RIGHT TO TAX. HUNGARY FAVORED TAXATION IN THE COUNTRY OF RESIDENCE WITH THE POSSIBILITY OF RETAINING THE RIGHT OF DEVELOPING COUNTRIES TO TAX AT SOURCE. THE DEVELOPING COUNTRIES EXPRESSED A CONCERN WITH TRANSFERRING REVENUES AND FOREIGN EXCHANGE.

5. AS TO THE SCOPE OR FIELD OF APPLICATION OF THE CONVENTION, MOST DELEGATIONS FAVORED LIMITING THE APPLICATION TO PURE LITERARY, MUSICAL, AND ARTISTIC COPYRIGHT WHILE OTHERS, SUCH AS MEXICO, FAVORED EXTENSION TO NEIGHBORING RIGHTS. HUNGARY PROPOSED THAT IT BE LIMITED TO RIGHTS PROTECTED BY THE BERNE AND UNIVERSAL CONVENTIONS.

6. THE DEVELOPING COUNTRIES CAUCUSED AND AGREED: DOUBLE TAXATION FOR AUTHORS OF BOTH DEVELOPED AND DEVELOPING COUNTRIES SHOULD BE AVOIDED; A MULTILATERAL CONVENTION SHOULD NOT, TO THE PREJUDICE OF DEVELOPING COUNTRIES, AFFECT BILATERAL CONVENTIONS; NO DECISION AS TO THE CRITERIA FOR TAXATION HAD BEEN REACHED HOWEVER, IF RESIDENCE IS THE CRITERION THERE SHOULD BE A PREFERENCE FOR DEVELOPING COUNTRIES TO ENABLE THEM TO LEVY TAXES TO AVOID UNNECESSARY OUTFLOWS OF FOREIGN EXCHANGE WITH THE DEVELOPED COUNTRIES GIVING A TAX CREDIT; THEY WERE FLEXIBLE AS TO THE RATE OF TAX WHICH MAY BE APPLIED TO COPYRIGHT ROYALTIES; IF SOURCE IS ADOPTED, PREFERENTIAL TREATMENT SHOULD BE GIVEN DEVELOPING COUNTRIES.

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7. AT THE END OF THE SECOND DAY A WORKING GROUP CONSISTING OF WEST GERMANY, BRAZIL, IVORY COAST, US, GHANA, HUNGARY, MEXICO, NETHERLANDS, USSR, SPAIN, SWITZERLAND AND TOGO WAS FORMED. THE PRESIDENT OF THE PLENARY CONFIRMED IN RESPONSE TO A USDEL INQUIRY THAT ALTHOUGH WE ARE PROCEEDING WITH WORK ON A DRAFT MULTILATERAL AGREEMENT, NO DECISION HAS BEEN MADE THAT

THIS APPROACH IS FEASIBLE. THE COMMITTEE CANNOT IN ANY CASE BIND THE GOVERNMENTS. MR. DA COSTA OF BRAZIL WAS ELECTED CHAIRMAN.

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8. WEDNESDAY AND THURSDAY THE WORKING GROUP CONCENTRATED ON ARTICLES RELATING TO THE CRITERION FOR TAXATION, THE RELATIONSHIP OF A MULTILATERAL CONVENTION TO EXISTING AND FUTURE UNILATERAL CONVENTIONS, THE SCOPE OF THE CONVENTION, AND THE TAXES TO WHICH IT WOULD APPLY. THE DEVELOPED COUNTRIES CONTINUED THEIR ARGUMENTS FOR A CRITERION BASED ON RESIDENCE WHILE THE DEVELOPING COUNTRIES PRESSED FOR A CRITERION BASED ON SOURCE WITH A CREDIT IN THE COUNTRY OF RESIDENCE EVEN IF TAX IS NOT ACTUALLY PAID (TAX SPARING). THE CHAIRMAN SUGGESTED TAX RATES OF 25 IN THE CASE OF DEVELOPING COUNTRIES AND 5 IN THE CASE OF DEVELOPED COUNTRIES. THE US DELEGATION POINTED OUT THAT BILATERAL TREATIES CONTAINING TAX SPARING PROVISIONS HAD NOT BEEN RATIFIED BY ITS SENATE, AND THAT THE US INSISTED UPON RECIPROCITY IN ITS BILATERAL TAX CONVENTIONS. ALTHOUGH THE US SENATE HAD ACCEPTED NON-RECIPROCITY IN THE UNIVERSAL CONVENTION IN THE CASE OF DEVELOPING COUNTRIES, IT COULD NOT BE

CONFIDENT OF THE POSITION THE SENATE WOULD TAKE IN THE CASE OF THIS AGREEMENT, WHICH INVOLVES BOTH COPYRIGHT AND TAX POLICIES. EGYPT STATED THAT IT WAS AWARE THAT THE US HAD REFUSED TO GIVE TAX SPARING.

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9. AS TO THE FIELD OF APPLICATION OF THE CONVENTION, THE DEBATE CENTERED ON LIMITING THE CONVENTION TO PURELY LITERARY WORKS, TO ALL COPYRIGHT MATERIALS OR TO INCLUDE NEIGHBORING RIGHTS. THE US DELEGATION STATED THAT IT SHOULD COVER ROYALTIES FOR THE USE OF ALL COPYRIGHTABLE MATERIALS INCLUDING FILMS WHICH ARE COVERED BY THE BERNE AND UNIVERSAL CONVENTIONS. THE CHAIR PROPOSED THAT THE CONVENTION APPLY TO COPYRIGHT ROYALTIES IN THE "CONVENTIONAL SENSE." TWO OPTIONAL PROVISIONS COULD COVER RESPECTIVELY, AUDIO-VISUAL WORKS AND NEIGHBORING RIGHTS. THESE COULD BE ADOPTED ONLY BY THOSE STATES WISHING TO DO SO.

10. AS TO THE TAXES COVERED, IT WAS AGREED TO LIMIT THE CONVENTION TO INCOME TAXES, INCLUDING LOCAL TAXES. THE USDEL EXPRESSED ITS RESERVATION AS TO APPLICATION TO LOCAL TAXES, AND THE CHAIRMAN INDICATED THAT A RESERVATION COULD BE MADE.

11. AS TO THE PERSONS COVERED, IT WAS DECIDED TO INCLUDE THE AUTHOR AND HIS SUCCESSORS IN TITLE, I.E. THE HOLDERS WHOMEVER THEY MAY BE. IN ADDITION, IT WAS AGREED THAT BOTH INDIVIDUALS AND LEGAL ENTITIES WOULD BE COVERED.

12. THE USDEL RAISED THE PROBLEM OF AVOIDANCE OF FISCAL EVASION.
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